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Attorney for Plaintiffs MIRSAD HAJRO and JAMES R. MAYOCK

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

MIRSAD HAJRO, JAMES R. MAYOCK

Plaintiffs,

v.

UNITED STATES CITIZENSHIP
 AND IMMIGRATION SERVICES,
 T. DIANE CEJKA, Director
 USCIS National Records Center,
 ROSEMARY MELVILLE,
 USCIS District Director of San Francisco,
 MICHAEL CHERTOFF, Secretary
 Department of Homeland Security,
 MICHAEL B. MUKASEY, Attorney General
 Department of Justice

Defendants

No. C 08-1350 PSG

**Notice Of Withdrawal Of
 Plaintiffs' Alternative
 Motion For Attorney's Fees
 And Costs Under The Equal
 Access To Justice Act
 28 U.S.C. § 2412(d)
 And [Proposed] Order**

On June 5, 2012, Plaintiffs filed a Motion For Attorney's Fees And Costs Pursuant To the Freedom Of Information Act ("FOIA")(5 U.S.C. § 552(A)(4)(E) and, *alternatively*, under the Equal Access To Justice Act ("EAJA") (28 U.S.C. § 2412(d)) (Dkt.93 and 94). Plaintiffs now withdraw the alternative motion for attorneys' fees and costs under EAJA after determining that the EAJA motion was premature.

Hajro v. USCIS C 08-1350 PSG
 Pl. Withdrawal of Alternative EAJA Motion

1 EAJA states “A party seeking an award of fees and other expenses shall,
2 within thirty days of final judgment in the action, submit to the court an
3 application for fees and other expenses...” 28 U.S.C. § 2412(d)(1)(B). The term
4 “final judgment” is defined in the statute as “a judgment that is final and not
5 appealable”. 28 U.S.C. § 2412(d)(2)(G). (“[W]e...construe the Act’s definition of
6 ‘final judgment’ as designating the date on which a party’s case has met its
7 final demise, such that there is no longer any possibility that the district
8 court’s judgment is open to attack.” *(internal punctuation omitted)* *Al-Harbi v.*
9 *INS*, 284 F.3d 1080, 1084 (9th Cir. 2002). Since the Court’s decision in this
10 case is currently on appeal in the Ninth Circuit, the judgment is not yet “final”
11 and therefore the filing of the alternative EAJA motion was premature.
12 Plaintiffs’ counsel apologizes for any confusion caused by this incorrect filing.

13 However, no such rule applies to a motion for attorney’s fees and costs
14 under FOIA. Therefore, Plaintiffs’ motion for attorney’s fees and costs under
15 FOIA (5 U.S.C. § 552(A)(4)(E)) should remain on calendar for a hearing on July
16 24, 2012 at 10 a.m.

17
18 Dated: June 9, 2012

Respectfully submitted,

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20 _____/s/_____
21 Kip Evan Steinberg
22 Attorney for Plaintiffs
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[Proposed] Order

Plaintiffs' alternative motion for attorney's fees and costs under the Equal Access To Justice (28 U.S.C. § 2412(d)) is withdrawn. Plaintiffs' motion for attorney's fees and costs under the Freedom Of Information Act ("FOIA")(5 U.S.C. § 552(A)(4)(E) remains on the Court's calendar for July 24, 2012 at 10 a.m.

IT IS SO ORDERED.

DATED: 6/13/12 BY: [Signature]


Paul S. Grewal
United States Magistrate Judge